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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ULRICH RISCHER, an individual

Plaintiff,

vs.

BANLAVOURA I, INC., et al

Defendants

Case No. CV 96-3886 SJO (RNBx)

CREDITOR'S REPLY TO FOX
ROTHSCHILD'S OPPOSITION TO AN
ORDER OF CONTEMPT

Hon. S. James Otero

Date: August 16, 2010

Time: 10:00 a.m.

Place: Courtroom 1

The Assignment Order consists of four distinct parts: Paragraph 1 describes the assigned rights; ¶ 2 sets out a list of those enjoined from interfering with the rights assigned; ¶ 3 and 4 identifies entities from which monies or assets are to be diverted; and ¶ 5 defines the duration of the order. Each part has a specific purpose and together, all are imperative to the existence of a sound, enforceable order.

Fox Rothschild leads with the argument that only the obligors in paragraphs 3 and 4 are bound by the Court's Order and that Featherby is moving against the "wrong party".¹ This implies that paragraph 2 is of no force and effect. Fox

¹ Fox is not the 'wrong' party. They are one of many obligated to either perform certain acts or enjoined from undertaking others. Each must answer for its own transgressions.

1 knows this to be a spurious argument. The question of whether attorneys could or
 2 should be enjoined from receiving payments from those named in ¶ 3 was hotly
 3 contested in the Esacoves objection and soundly defended by Featherby on reply.
 4 The court found in Featherby 's favor and set a course where "Judgment Debtors,
 5 as well as their respective principals, agents, partners, managers, attorneys,
 6 employees, servants, heirs, assignees, successors, representatives and all persons
 7 acting under, in concert with or for them, are hereby enjoined from receiving,
 8 transferring, assigning, disposing, interfering with, or encumbering any of the
 9 assigned current or future rights to payment due Judgment Debtors pending further
 10 order of this Court.." [Order: ¶2]. Fox cannot pretend that paragraph 2 does not
 11 exist as a distinct and meaningful Order of the Court directed to an audience
 12 wholly separate from those named in ¶3. Their argument makes no sense.
 13 Paragraph 3 speaks to those from whom the debtors may receive payments and ¶2
 14 addresses those who, if not enjoined, may unlawfully aid the debtors in thwarting
 15 the Order. Fox's contention that those named in ¶2 are free to ignore the Order re-
 16 opens the very door the Court sought to close in crafting paragraph 2.

17 Act II finds Fox Rothschild re-writing the Order to justify their defiance. As
 18 though the Court could be fooled by a play on words, Fox plucks three terms from
 19 the 14-word description in ¶1 and defines them to fit their argument. Throughout
 20 their opposition, Fox claims that the Court assigned Featherby the right to receive
 21 "proceeds, commissions, and payments". Fox omits the remainder of the sentence
 22 which expounds upon what is included in the category of "payments or proceeds".
 23 The full measure of the assignment holds: "That the following rights to payments
 24 or proceeds, including fees, royalties, commissions, bonuses, securities, properties,
 25 annuities, or other such interests, assets, earnings, future distributions and
 26 bequests belonging to [debtors]...are assigned to [Featherby]..." [Order: ¶1].

27 Worse, the definitions presented by Fox were taken from a 30-year-old
 28 version of Black's Law Dictionary. Though Featherby was unable to procure a

1 copy of the rare 5th Edition, circa 1979, it is doubtful that the term “distribution”
 2 was omitted from it or that Fox was unable to avail itself of a more recent edition.
 3 For the record, the term “distribution” presents in Black’s 9th Edition (2009) as
 4 “*The act or process of apportioning or giving out*”. The legal definition does not
 5 restrict the term “distributions” to that which one has ‘earned’, nor does it omit
 6 ‘loans’. EVMC “distributed” monies to Fox Rothschild to satisfy the Esacoves’
 7 debt. These are the undeniable facts.

8 Fox continues its play on words by alleging that because the monies they
 9 received were from “loans” made to the Esacoves, Fox could not therefore be in
 10 violation of the Order. Even if one were to believe that the payments tendered to
 11 Fox were borne of a legitimate lending transaction (a notion to which Featherby
 12 does not subscribe), technically, what Fox received were “loan proceeds”
 13 belonging to the Esacoves. “Loan Proceeds” are defined as “the net amount
 14 disbursed by a lender to a borrower, under the terms of a loan agreement².” By any
 15 measure, “Loan Proceeds” fits within the scope of the Assignment as “proceeds”
 16 “belonging” to the Esacoves. [Order: ¶1].

17 Fox’s assertion that the EJM does not include loans as a type of payment
 18 properly includable in an Assignment Order is a protest made too little, too late.
 19 As a matter of law, the only restriction to an Assignment Order is that the assigned
 20 rights must be assignable in nature. *See*: Legislative Committee Comment to Cal.
 21 Code. Civ. P. § 708.510. The mere fact that the Esacoves “assigned” their “loan
 22 proceeds” to Fox Rothschild is proof that the funds are assignable in nature.
 23 Moreover, the proper time to challenge the substance of the Order was in 2008.
 24 Fox cannot, in the midst of a motion for contempt, challenge the Order on which
 25 its violations of it are based. *United States ex rel. Bowles v Seidmon* 154 F2d 228
 26 (1946).

27
 28 ² [See: <http://www.businessdictionary.com/definition/loan-proceeds.html>].

1 Fox Rothschild takes the position that it would be inequitable to interpret the
 2 Order from prohibiting the Esacoves from paying its current obligations. The
 3 irony here is that the Order does not prohibit the Esacoves from paying its debt to
 4 Fox Rothschild. The Esacoves were free to pay Fox directly for the services Fox
 5 rendered to them. But for the Esacoves' scheme to shield their assets from levy or
 6 seizure by concealing their riches in one of their shell corporations and Fox's
 7 willingness to turn a blind eye to the source of the payments, we would not be here
 8 today. All parties took the low road and were caught. They must now face the
 9 consequences.

10 Fox Rothschild had a legal obligation to take all reasonable steps to ensure
 11 they were in compliance with the Order. *Shuffler v. Heritage Bank*, 720 F.2d 1141,
 12 1146 (9th Cir. 1983). Looking up a few select words in a thirty-year-old dictionary
 13 does not constitute "all reasonable steps". Relying upon the word of a client who
 14 himself is working diligently to avoid paying a \$12,000,000 debt is also a fool's
 15 errand. Judgment debtors advance arguments to delay, hinder, and defraud their
 16 creditors all the time. The Esacoves are no exception and Fox knows it. They
 17 happily detail the character of their former client in the verified complaint they
 18 filed in *Fox v. Esacove*. [See Riordan Decl. Exhibit B], e.g.:

19
 20 "...EVMC is a mere shell, instrumentality and conduit through which [the
 21 Esacoves] carry on their business in the corporate name, exercising complete
 22 control and dominance of such business to such extent that any individuality
 23 or separateness of said corporate defendant does not exist...." [¶6]

24 "Defendants purposely strung along Plaintiff knowingly maximizing the
 25 amount of professional services provided on their behalf." [¶21]

26 "Defendants further admitted that they have income, are using and enjoying
 27 that income for their own purposes, but are not using it to make payments on
 28 their debt." [¶25]

1 “Defendants’ actions were willful, wanton, malicious in bad faith, and
2 oppressive, and were knowingly undertaken with the intent to defraud and
3 inflict injury onto Plaintiff...” [¶63]

4 It is also without reason that Fox would rely upon the two exhibits tendered
5 by the Esacoves to save them from a contempt order without first verifying their
6 veracity. At the very least, Fox has a legal obligation to authenticate documents
7 they submit into evidence. Anthony Chopra is the sole signatory on both
8 documents. A phone call to confirm that he had indeed executed them was the
9 least of measures Fox should have taken. They did not. Had they done so, they
10 would have discovered that the documents are forgeries. [Chopra Decl. ¶5].

11 It is not a requirement that a lawyer believe everything a client tells them,
12 nor is it incumbent upon them to verify every statement and authenticate every
13 document produced in the course of their representation. However, when the
14 Court enters an Order enjoining a firm from undertaking specific acts, logic
15 dictates -- and the law requires -- that they take all reasonable steps to ensure that
16 they are not in violation of the Order. Fox Rothschild failed to do so.

17 When Fox was served with the Order, a new relationship was formed. One,
18 not of the attorney-client ilk, but one as between a litigant and the Court. From
19 that point, Fox had a duty separate and apart from its representation of the
20 Esacoves to ensure it was complying with the Court’s Order. Fox did not take this
21 duty seriously. It is likely that Fox did not anticipate that Featherby would acquire
22 a judgment against EVMC, delve into the company’s bank records, and discover
23 the truth. They were wrong. Fox Rothschild rolled the dice and were caught.
24 They must now face the consequences.

25 Finally, Fox Rothschild alleges that some of the monies they received were
26 to pay for debts EVMC owes to them. The only evidence submitted to support this
27 notion is the declaration of Staci Riordan, which does not square with the facts in
28 evidence. By their own admission, the six payments for \$125,000 Fox received


1 between March 12 and June 22, 2009 are a "*Summary of Esacove Payments to*
2 *date*". In their complaint against the Esacoves, Fox admits that they received a
3 good faith payment of \$25,000 from the Esacoves in September of 2009. The
4 Citibank check for \$15,000 dated July 7, 2009 shows that the remitter, Lawrence
5 A. Esacove, instructs that the funds be applied to the account of Client #56060; the
6 account number assigned by Fox Rothschild as pertains to this case.

7 In a civil contempt proceeding, the "moving party has the burden of
8 showing by clear and convincing evidence that the contemnor violated a specific
9 and definite order of the court." *FTC v. Affordable Media*, 179 F.3d 1228, 1239
10 (9th Cir. 1999). The burden then shifts to the contemnor to demonstrate why he
11 has been unable to comply with the order. *See Affordable Media*, 179 F.3d 1228,
12 1239 (9th Cir. 1999) (citing *Stone*, 968 F.2d at 856 n.9).

13 Fox Rothschild readily admitted that they received payments from EVMC to
14 satisfy the Esacoves' debts. This is a direct violation of the Assignment Order.
15 Featherby has met her burden. Fox has not demonstrated to the Court why they
16 were "unable" to comply with the Order, only that they chose not to.

17 Respectfully submitted,
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20 Dated: 7-30-10

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22 _____
23 Ramona Featherby, dba
24 California Judicial Recovery Specialists
25 Judgment Creditor
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